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MEMORANDUM

Engineering Division



To: Honorable Mayor and City Council

Through: Thomas J. Wilson, City Manager

From: David M. McNeely, City Engineer *DM*

By: Joe Ezeokeke, Acting Associate Engineer *JE*

Cc: Mark Rogge

Subject: Revised Disadvantaged Business Enterprise (DBE) Program Goal for Federal and State Funded City Projects

Date: November 5, 2002

RECOMMENDATION

Adopt A RESOLUTION APPROVING REVISED DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM GOAL FOR FEDERALLY FUNDED CITY TRANSPORTATION PROJECTS and set an annual overall DBE goal of 14 percent for the City of Milpitas for U.S. Department of Transportation Federal-aid projects.

FISCAL IMPACT

Implementing the Revised Disadvantaged Business Enterprise (DBE) Program for U.S. Department of Transportation Federal-aid projects will not significantly impact the City's cost for these projects. The City cannot receive Federal funds for transportation projects if it does not adopt the revised DBE program goal.

BACKGROUND AND ANALYSIS

Title 49 of the Code of Federal Regulations (CFR) requires a recipient of DOT funds to have a DBE program and to establish an annual overall goal to use disadvantaged businesses. The purpose of the DBE program is to afford DBEs, as

defined in 49 CFR, the maximum opportunity to participate in projects financed with DOT funds.

The City's DBE Program conforms with the model program developed by Caltrans. The program includes a policy statement, duties of a DBE liaison officer, contract requirements with respect to DBEs and requirements for reporting and record keeping. The program also describes the method to establish an annual overall DBE goal for the City. The DBE goal is not a quota, but a numeric objective based on several factors, including the number and type of contracts to be awarded by the recipient, the availability of DBEs in the area and past results on DBE utilization. Recipients may award contracts to successful bidders who meet contract goals and/or demonstrate they have made a good-faith effort to do so.

Setting and Meeting DBE Goals

The rule explicitly prohibits the use of quotas and set-asides, and provides more flexibility in the method for setting overall goals. The overall goal must represent a level playing field; in other words, the amount of DBE participation a recipient could realistically expect in the absence of discrimination. Caltrans' model program provides a goal setting methodology that meets the ruling. Using this methodology, the City's stated overall DBE goal in the Program is 19 percent for Fiscal Year 2001/02. The City is required to review the overall DBE goal annually and report any changes to Caltrans.

The rule incorporates provisions to facilitate DBE and non-DBE participation and to review performance on contracts. These include prompt payment, retention release and nondiscrimination classes for all subcontractors. Construction contracts must include these requirements.

Criteria for DBE Certification

The rule clarifies the standards for contracting firms seeking certification as a DBE and provides detailed and specific criteria for DBE ownership and control requirements. DBE certification is administered by Caltrans which maintains a DBE directory.

The City's Revised DBE program goal (attached) has been reviewed and approved by Caltrans. As required by the new rule, a notice informing the public of the DBE program and the proposed annual overall DBE goal was published in the local newspaper in November 14, 2002. The revised program goal has been available for public review for at least 30 days. A public comment period regarding the

November 5, 2002

program and revised annual goal has been completed for 45 days following the date of notice. To date, no public comments have been received. The adoption of the revised DBE program goal is a prerequisite to advertising Federal-aid projects for bids. The City's Berryessa Creek Trail Reach 3 project partially funded by Federal grants is ready for advertising in early spring 2003.

PUBLIC NOTICING

Agenda posting and publishing a notice of the proposed revised overall DBE goal per Federal requirements.

DEPARTMENT OF TRANSPORTATION

P.O. BOX 23440

OAKLAND, CA 94623-0440

*Flex your power!
Be energy efficient.*

November 6, 2002

04-SCL-0-MPS
DBE Program
Year: FY 2002/03
Goal: 14 %

Mr. Joe Ezeokeke
DBELO
City of Milpitas
445 - East Calaveras Blvd
Milpitas, Ca 95035-5479

RECEIVED
NOV 14 2002
CITY OF MILPITAS
ENGINEERING DIVISION

Re: Approval of "Draft - DBE Annual Overall Goal Information Submittal"

Dear Mr. Ezeokeke:

We received your draft DBE annual overall goal information for FY 2002/03 that you recently sent to this office. Our staff has reviewed the contents and elements of the annual overall goal information, and we find it meets the requirements of Title 49 CFR Part 26. Your draft DBE annual overall goal information is hereby approved.

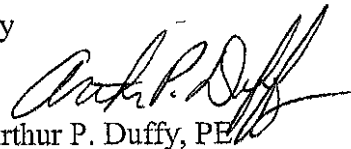
With this draft approval, you should publish a 30/45 day public notice as outlined in Section 9.5 of the Local Program Procedure 01-04 (LPP 01-04). Please send us a copy of the publication notice, your response to any comments received from the public, and a copy of your adopted annual overall goal information executed by the DBE Liaison Officer for final approval.

Further information regarding the DBE program - including the LPP (01-04), can be found at the Local Programs website at www.dot.ca.gov/hq/LocalPrograms/. If you have any questions feel free to call Moe Shakernia at 510-286-5236 or myself at 510-622-5928.

Sincerely,

Richard J. Monroe, Chief
Office of Local Assistance

By


Arthur P. Duffy, PE
Local Assistance Engineer

CITY OF MILPITAS, CALIFORNIA

**REVISED DISADVANTAGED BUSINESS ENTERPRISE (DBE)
PROGRAM**

FOR LOCAL AGENCIES FOR 2002-03

AUGUST 26, 2002

This Program is in accordance with Title 49 of the Code of Federal Regulations, Part 26,

I. Overall Goals (\$26.45)

**City of Milpitas
Overall Annual DBE Goal and Methodology**

A. DOT-Assisted Contracting Program for Fiscal Year 2002-03

<u>Work Category</u>	<u>SIC/NAICS Category</u>	<u>Estimated \$ Value</u>	<u>% of Fed Funding by Work Category</u>
Heavy Construction	16/234	\$375,000	100%
TOTAL		<u>\$ 375,000</u>	<u>100.00</u>

The City's recent experience shows DBEs with SIC Codes 16 and 17 have been used.

B. Goal Methodology

Step 1: Determining a Base Figure:

The City of Milpitas' Overall Annual DBE Goal for Fiscal Year 2002-03 is set in accordance with 49 CFR Part 26.45 criteria.

The City of Milpitas historically has used contractors from work category SIC Code 16/NAICS 234 for its program requirements; however, recent contracts also included work by specialty contractors (SIC Code 17).

SIC 16/NAICS 234 Heavy Construction (See Attachment B)	39/288 =13.54%	DBE firms in the market area for the project/Total firms available for the project in the market area (1997 Census)

Step 2: Adjusting the Base Figure

There is no record of previous participation to draw on

Finalized Breakout of Estimated Race-Neutral and Race-Conscious Participation

Based on the data shown, the proposed Overall Annual Goal for the City of Milpitas is as follows:

<u>Race-Neutral Method</u>	<u>Race-Conscious Method</u>	<u>Annual DBE Goal</u>
0%	13.54%	13.54% say 14%

The City of Milpitas will monitor its progress during the course of the year to ensure compliance with DBE program requirements.

C. Process

Starting with the Federal Fiscal Year 2002, the amount of overall goal, the method to calculate the goal, and the breakout of estimated race-neutral and race-conscious participation will be required annually by June 1 in advance of the Federal fiscal year beginning October 1 for FHWA-assisted contracts. Submittals will be to the Caltrans' DLAE. An exception to this will be if FTA or FAA recipients are required by FTA or FAA to submit the annual information to them or a designee by another date. FHWA recipients will follow this process:

Once the DLAE has responded with preliminary comments and the comments have been incorporated into the draft overall goal information, the City of Milpitas will publish a notice of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the City of Milpitas City Hall for thirty (30) days following the date of the notice, and informing the public that comments will be accepted on the goals for forty-five (45) days following the date of the notice. Advertisements in newspapers, minority focus media, trade publications and websites will be the normal media to accomplish this effort. The notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

The overall goal resubmission to the Caltrans DLAE, will include a summary of information and comments received during this public participation process and City of Milpitas' responses. This will be due by September 1 to the Caltrans DLAE. The DLAE will have a month to make a final review so the City of Milpitas may begin using the overall goal on October 1 of each year.

This Disadvantaged Business Enterprises Methodology & Goal is accepted by:


[Signature of DLAE]

Date: 11/14/02

Exhibit A

City of Milpitas
Engineering Department
DBE-Base Percentage
Potential Projects for FY 2002/03

Project Name	Amount of Total Project Funds	Amt. of Fed Funds for this project	DBE Goal Amount For this project (See Attachment B)	DBE Percenta ge For this project
Berryessa Creek Trail	\$506,169	\$375,000	\$67,121	13.26
Total of Requests	\$506,169	\$375,000	\$67,121	13.26

DBE Goal for Fiscal Year 2002/2003

Overall Goal = 13.54% say 14%

Exhibit B

City of Milpitas Berryessa Creek Trail Reach 3 Pedestrian Bridge at Town Center Project 5074

Award Date: Spring of 2003

Description	WCC Code	# of DBE firms in District 4 for this project	County	# of DBE firms in Market Area for this project	Total # of other firms in the Market Area	Total # of all firms in Market Area	% DBE firms	Estimated Cost	DBE \$ Amount
BRIDGE									
Prefabricated Pedestrian Bridge, including installation	C7505	4		2	9	11	18.18	154,855.00	28,155
			1-Alameda						
			2-Contra Costa						
			1-San Mateo						
Bridge Abutments and Wingwalls									
Concrete	C5100	3		0	25	25	0.00	3,400.00	0
			2-Contra Costa						
			1-S.F.						
Forms	C5100							12,075.00	0
			2-Contra Costa						
			1-S.F.						
Reinforcing	C5201	4		4	17	21	19.05	3,128.00	596
			4-Alameda						
Finishing	C5110	2		2	25	27	7.41	1,002.00	74
			2-Alameda						
Drainage behind abutments and wingwalls	C6815	4		0	5	5	0.00	400.00	0
			2-Contra Costa						
			2-S.F.						
Strip topsoil, remove trees, haul & dispose	C1601	1		0	5	5	0.00	3,700.00	0
			1-S.F.						
Demolish (E) guardrail along Paseo Refugio	C9980	0		0	5	5	0.00	5,244.00	0

**City of Milpitas
Berryessa Creek Trail
Reach 3
Pedestrian Bridge at Town Center
Project 5074**

Award Date: Spring of 2003

Description	WCC Code	# of DBE firms in District 4 for this project	County	# of DBE firms in Market Area for this project	Total # of other firms in the Market Area	Total # of all firms in Market Area	% DBE firms	Estimated Cost	DBE \$ Amount
Excavate for segmental retaining walls	C1920	2	1-Alameda 1-S.F.	1	4	5	20.00	1,694.00	339
Excavate for bridge abutment & wingwalls	C1920	2	1-Alameda 1-S.F.	1	5	6	16.67	924.00	154
Bench, place & compact imported fill	C1925	2	1-Alameda 1-S.F.	1	4	5	20.00	924.00	185
Cement treated subgrade for surfaced areas	C2700	4	2-S.F. 2-Santa Clara	2	8	10	20.00	4,774.00	955
Compacted cement-treated aggregate surface	C2700							1,755.00	351
Concrete paving incl scoring, integral color	C4010	5	2-Alameda 2-S.F. 1-San Mateo	3	13	16	18.75	13,500.00	2,531
Aggregate base under concrete slab	C2602	1	1-Santa Clara	1	5	6	16.67	1,050.00	175
Manufactured Modular Walls (exposed face area)								50,232.00	8,372
Modular Wall Footing, compacted aggregate	C2602							1,700.00	283
Drainage behind manufactured modular walls	C6815	4	2-Contra Costa 2-S.F.	0	5	5	0.00	1,453.00	0
Drainage piping behind manufactured modular walls	C6815	4		0	5	5	0.00	1,135.00	0

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Berryessa Creek Trail
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			2-Contra Costa 2-S.F.						
Mesh fence/guardrail	C0680	7		4	17	21	19.05	24,500.00	4,667
			4-Alameda 2-San Mateo 1-S.F.						
Manufactured Benches	C5124	1		1	5	6	16.67	1,650.00	275
Trash Containers	D3410	1	1-San Mateo	1	5	6	16.67	1,200.00	200
Signs	C5601	4	1-Alameda 2-San Mateo 1-Santa Clara	4	18	22	18.18	1,540.00	280
Hydroseeding	C2021	1	1-Alameda	1	5	6	16.67	1,000.00	875
End, Bridge									
TRAIL									
Strip topsoil, haul & dispose	C1601		used, see above)					5,335.00	0
Compacted cement-treated aggregate surface	C2700		1-Alameda (used, see above)					11,700.00	2,340
Cement treated subgrade for surfaced areas	C2700							31,620.00	6,324

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Compacted aggregate base	C2602		(used, see above)					5,746.00	958
Rough Grade, Crack Seal, Scarify and Recompact Subgrade	C1910	1	(used, see above)						
Trees/Shrubs at N. Milpitas Blvd.	C0620	2	1-Alameda	1	5	6	16.67	14,160.00	2,360
Irrigation	C2065	0	1-Alameda	1	5	6	16.67	2,000.00	333
Turnstiles	D3400	3	1-Contra Costa	0	15	15	0.00	750.00	0
			2-Alameda	2	5	7	28.57	2,400.00	686
			1-Contra Costa	0	4	4	0.00	1,800.00	0
Granite Benches	C0626		(used, see above)					4,950.00	825
Manufactured Benches	C5124		1-San Mateo						
Trash Containers	D3410		(used, see above)					3,600.00	600
Boulders	C7200		1-Alameda	3	12	15	20.00	2,860.00	572
			3-Alameda						
			1-S.F.						
Chainlink Fence	C0680		(used, see above)					11,025.00	2,100
									0
									0
Chainlink Gate	C0680							1,500.00	286
									0
									0
									0

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Signs	C5601		(used, see above)					3,520.00	640
									0
									0
Hydroseeding	C2021		(used, see above)					875.00	146
			1-Alameda						0
Bollard	C6500	6	2-Alameda	4	13	17	23.53	200.00	47
			2-S.F.						
			2-San Mateo						
Concrete paving incl scoring, integral color	C4010	4	(used, see above)					2,175.00	408
			2-Alameda						
			2-S.F.						
			1-San Mateo						
Aggregate base under concrete slab	C2602		(used, see above)			0		180.00	30
End, Trail									

**City of Milpitas
Berryessa Creek Trail
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Project 5074**

Award Date: Spring of 2003

Description		# of DBE firms in District 4 for this project	County	# of DBE firms in Market Area for this project	Total # of other firms in the Market Area	Total # of all firms in Market Area	% DBE firms	Estimated Cost	DBE \$ Amount
Subtotal, Hard Construction									
Mobilization & demobilization	3%								
Allowance for General Condition items	10%								
Bond	2%								
Subtotal, Bridge & Trail Construction									
TOTAL BASE BID									
Contingency	10%								
TOTAL incl. Contingency Allowance		72		39	249	288	13.54	399,231.00	67,121.27
Subtotal Hard Construction								11,977.00	
Mobilization & Demobilization								39,923.00	
Allowance for General Condition items								9,023.00	
Bond								460,154.00	
Total Base Bid									
Contingency	10%							46,015.00	
Total Incl. Contingency Allowance								506,169.00	

RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS
APPROVING REVISED DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM
GOAL FOR FEDERALLY FUNDED CITY TRANSPORTATION PROJECTS

WHEREAS, the City of Milpitas has implemented a Disadvantaged Business Enterprise (DBE) program to comply with California Department of Transportation and United States Department of Transportation (DOT) requirements in order to receive Federal funds for City transportation projects; and

WHEREAS, the DBE rule established a methodology for setting overall goal for DBE participation in the performance of contracts financed in whole or in part with DOT funds and based on this methodology, the revised overall goal for the City shall be 14 percent for Fiscal Year 2002-03. The City shall review the overall goal annually and report any updates to the California Department of Transportation.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Milpitas, public entity established under the laws of the State of California, does hereby adopt the revised DBE program goal and sets the current overall DBE participation goal in the performance of contracts financed in whole or in part with DOT funds at 14 percent for Fiscal Year 2002-03 with all terms and provisions of the DBE program set forth in Exhibit A and Exhibit B, attached hereto and made part hereof, for all City projects which receive DOT funds.

PASSED AND ADOPTED this 7th day of January, 2003, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Gail Blalock, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Steven T. Mattas, City Attorney